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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-334
Administrative Law Judge Division
November 10, 2016

RESOLUTION

RESOLUTION ALJ-334. Resolves K.16-04-003, the Appeal of TeleUno, Inc. (U6444C) of Citation 588-729, and K.16-04-004, the Appeal of TeleDias Communications, Inc. (U6725C) of Citation 189-587.

SUMMARY

This resolution resolves the Appeal of TeleUno, Inc. (TeleUno) (U6444C) from Citation 588-729, issued on February 17, 2016, by the Utility Enforcement Branch of the Safety and Enforcement Division, and the Appeal of TeleDias Communications, Inc. (TeleDias) (U6725C) from Citation 189-587, issued on February 17, 2016, by the Utility Enforcement Branch of the Safety and Enforcement Division.

BACKGROUND

On February 12, 2016, the Federal Communications Commission issued a Notice of Apparent Liability for Forfeiture against TeleUno and TeleDias (Appellants) for changing consumers' long distance carrier without properly verifying the consumers' authorization, and for charging consumers for long distance services that were never authorized. On February 17, 2016, Consumer Protection and Enforcement Division (CPED)¹ issued citations to Appellants for violation of Pub. Util. Code § 2889.5 and the Code of Federal Regulations (47 CFR 64.1120(c)(iii)) for failure to provide to the Commission a third-party verification tape (TPV) or acceptable evidence showing a change in provider was authorized. CPED cited TeleUno for 142 violations and

¹ The Consumer Protection and Safety Division has been renamed the Consumer Protection and Enforcement Division.

TeleDias for 399 violations. On April 4, 2016, TeleUno and TeleDias timely appealed their respective citations.²

On July 15, 2016, Appellants filed motions to withdraw their appeals. Appellants state their operations ceased as of July 6, 2016, because Appellants' billing aggregator, Billing Services Group, and AT&T froze all revenues. Appellants state they have fired all employees, terminated their lease, and are no longer in business. As a result, Appellants contend they are no longer able to prosecute an appeal. On August 1, CPED responded to the motion to withdraw.

CPED asks the Commission to consider whether withdrawal of the appeals is in the public interest, consistent with the law, and reasonable in light of the facts of the case. CPED requests the Commission remind Appellants that by withdrawing their appeals, the citations are unchallenged. As a result, CPED asserts the citations are past due.³ CPED contends the Commission could then revoke Appellants' operating authority and take appropriate action necessary to recover unpaid fines and ensure compliance. CPED therefore requests the Commission order Appellants' performance bonds forfeited to assist CPED in collecting the bond amount from the bonding institution.

On August 5, 2016, Appellants moved for permission to reply to CPED's response to the Motion to Withdraw. The August 5, 2016 motion is denied.

RESOLUTION OF THE APPEALS

Appeals of citations issued under Resolution UEB-001, as modified by Resolution UEB-002⁴ are governed by Resolution ALJ-299. Where Resolution ALJ-299 and Resolution UEB-001 are silent on a procedural issue, the Commission's Rules of Practice and Procedure are applicable. Public Utilities Code (Pub. Util. Code) Section 2889.5 contains procedures that utilities must follow to change a consumer's presubscribed telecommunications carrier. As relevant here, Section 2889.5 requires a third-party to record a consumer's oral verification regarding the change.⁵ Appellants were each cited for providing fraudulent TPV recordings to support a consumer's change of long distance carrier.

² On July 26, 2016, the assigned Administrative Law Judge consolidated the appeals at Appellants' request.

³ Payment is due within 30 days from the issuance of the citation.

⁴ Resolution UEB-001, as modified by Resolution UEB-002 adopted a citation program for enforcing compliance with third party verification requirements of Public Utilities Code Section 2889.5(a)(3) and (7) and Commission regulations applicable to this code section under the administration of the Director of the Consumer Protection and Safety Division.

⁵ Pub. Util. Code § 2889.5(3)(C).

Resolution UEB-001 authorizes CPED to issue citations for violations of the Public Utilities Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal under Resolution ALJ-299. TeleUno Citation 588-729 and TeleDias Citation 189-587 should be dismissed with prejudice upon the unopposed motion to withdraw the appeal. As a result, all citations are deemed valid. Appellants shall account for each customer for each instance that Appellants were cited for failure to obtain a valid TPV.

Appellants are required to notify the Communications Division, have notice language approved, and provide such notice to customers 30 days prior to withdrawing from the market.⁶ It is unclear from Appellants' filing whether Appellants' customers have been properly notified. We understand Appellants' request to withdraw as constructive notice to the Commission that Appellants are withdrawing from the market. Appellants' operating authority is therefore revoked. Appellants shall provide notice to their customers.

Companies that provide billing and collection services shall cease billing and collection services for Appellants as they are no longer authorized to conduct business in this state. In addition, any carrier that provides underlying service to Appellants or billing and collection services shall hold any funds destined for Appellants.

Appellants were required to hold a performance bond to facilitate the collection of fines, penalties and restitution. Because Appellants no longer have operating authority and have stated that they have ceased operations with no access to financial resources, Appellants' bond is forfeited and may be collected to ensure payment of customer refunds, fees, and fines resulting from the citations at issue, which are now due.

Appellants must include a reference to these consolidated appeals, should they or any of Appellants' officers, directors or persons owning 10 percent or more interest in TeleUno or TeleDias file for operating authority with the Commission in the future.

SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (See for example, Pub. Util. Code §§ 451, 5382 and 5387.) Withdrawal of the appeal with prejudice is consistent with the Commission's authority to ensure charter party carriers are meeting their regulatory obligations.

⁶ Pub. Util. Code § 2889.3.

COMMENTS

No public comment is required for this resolution pursuant to Rule 14.7.

ASSIGNMENT OF PROCEEDING

Katherine Kwan MacDonald is the assigned Administrative Law Judge for this citation appeal.

THEREFORE, IT IS ORDERED that:

1. The Appeal of TeleUno, Inc., from Citations 588-729 issued on February 17, 2016 is dismissed with prejudice.
2. The certificate of public convenience and necessity granted to TeleUno, Inc., by Decision 00-11-021 is revoked. The assigned corporate identification number "U-6444-C" is cancelled.
3. The performance bond of TeleUno, Inc., is forfeited. The Consumer Protection and Enforcement Division is authorized to collect the bond to ensure payment of refunds and fines now due.
4. TeleUno, Inc., shall provide customer information to the Consumer Protection and Enforcement Division for each citation.
5. The Appeal of TeleDias Communications, Inc., from Citation 189-587 is dismissed with prejudice.
6. The certificate of public convenience and necessity granted to TeleDias Communications, Inc., by Decision 02-10-072 is revoked. The assigned corporate identification number "U-6725-C" is cancelled.
7. The performance bond of TeleDias Communications, Inc., is forfeited. The Consumer Protection and Enforcement Division is authorized to collect the bonds to ensure payment of refunds and fines now due.
8. TeleDias Communications, Inc., shall provide customer information to the Consumer Protection and Enforcement Division for each citation.

9. Any officer, director, or person owning 10 percent or more of either TeleUno, Inc., or TeleDias Communications, Inc., must refer to this resolution if they file for operating authority in California.
10. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 10, 2016, the following Commissioners voting favorably thereon:

Timothy J. Sullivan
Executive Director

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners